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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

| | | |
|------------------------------|---|-----------------------------|
| In the Matter of: |) | ESCROW LICENSE NO. 963-1100 |
| |) | |
| THE COMMISSIONER OF BUSINESS |) | |
| OVERSIGHT, |) | SETTLEMENT AGREEMENT |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| THE ESCROW CHEQUE CORP. and |) | |
| MARCIA J. BOUEY, |) | |
| |) | |
| Respondents. |) | |
| |) | |

This Settlement Agreement is entered between The Escrow Cheque Corp. (ECC) and Marcia J. Bouey (Bouey), on the one hand, and the Commissioner of Business Oversight (Commissioner), on the other hand, and is made with respect to the following facts:

RECITALS

- A. ECC is a corporation in good standing, duly formed and existing pursuant to the laws of the State of California, and authorized to conduct business in the State of California.
- B. ECC is an escrow agent licensed by the Commissioner pursuant to the Escrow Law of

1 the State of California (Fin. Code, § 17000 et seq.).¹ ECC has its principal place of business located
2 at 22900 Ventura Boulevard, Suite 360, Woodland Hills, California 91364.

3 C. Bouey is, and was at all times relevant to the Accusation described in Paragraph E
4 below (Accusation), the president and owner of ECC.

5 D. Bouey is, and was at all times relevant to the Accusation described in Paragraph E
6 below, the escrow manager of ECC.

7 E. On August 3, 2017, ECC and Bouey were personally served by the Commissioner
8 with a Notice of Intention to Issue Order to Revoking Escrow Agent's License pursuant to section
9 17608 and an Order pursuant to section 17423 (Bar from Employment, Management or Control of an
10 Escrow Agent), Accusation and accompanying documents dated July 27, 2017.

11 F. It is the intention and desire of the parties to resolve this matter without the necessity
12 of a hearing and/or other litigation.

13 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
14 herein, the parties agree as follows:

15 **TERMS AND CONDITIONS**

16 1. Purpose: This Settlement Agreement is entered into for the purpose of judicial economy
17 and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

18 2. Order to Bar: Bouey agrees to the issuance by the Commissioner of an order barring
19 Bouey from any position of employment, management or control of any escrow agent for a period of
20 five years. The bar order shall be effective upon the effective date of the Settlement Agreement as
21 described in Paragraph 17. A copy of the bar order is attached and incorporated as Exhibit A.

22 3. Waiver of Hearing Rights: Bouey acknowledges her right to an administrative hearing
23 under section 17423 in connection with the bar and hereby waives that right to a hearing, and to any
24 reconsideration, appeal, or other rights which may be afforded pursuant to the Escrow Law, the
25 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
26 provision of law in connection with this matter.

27 _____
28 ¹ All code references are to the Financial Code.

1 4. Stock Sale: The Commissioner hereby agrees that Bouey shall be allowed 120 days
2 following the effective date of this Agreement within which to sell all the issued and outstanding
3 shares of stock of ECC. The 120-day period shall commence upon the effective date of this
4 Settlement Agreement as described in Paragraph 16. The 120-day period referenced herein shall be
5 referred to as the "Sale Period." The Commissioner acknowledges and agrees that, in the event the
6 sale of ECC to a prospective buyer fails to be completed (either due to the Commissioner failing to
7 approve such sale, or otherwise) during the pendency of the Sale Period, Bouey shall nevertheless
8 have the right to sell ECC to another buyer so long as the sale is completed during the Sale Period.
9 Any sale of ECC shall be an arms-length transaction to an independent third party in which Bouey
10 shall not have any personal or financial interest, or any interest or participation in employment,
11 management or control. Bouey agrees that in the event a sale is not completed within the Sale Period,
12 the escrow agent's license of ECC shall be automatically revoked and any rights to a hearing
13 regarding such revocation and to any reconsideration, appeal, or other rights which may be afforded
14 pursuant to the Escrow Law, the California Administrative Procedure Act, the California Code of
15 Civil Procedure, or any other provision of law in connection therewith are hereby waived.

16 5. Commissioner Approval: Bouey hereby acknowledges that pursuant to section 17213, any
17 change of ownership of an ongoing independent escrow agent business must be approved by the
18 Commissioner through the filing of an Application for Change of Ownership.

19 6. Compliance with Law: Bouey understands that ECC must be in full compliance at all
20 times with the Escrow Law, to include net worth and liquid asset requirements, annual audit
21 reporting, and books and records maintenance prior to approval of the change of ownership.

22 7. Change of Ownership Application: Except as otherwise provided in Paragraph 6 above,
23 the Commissioner hereby agrees to process the change of ownership in an expeditious manner, which
24 shall include prompt notice of any deficiency in the completeness of the change of ownership
25 application. Bouey agrees that in the event that the Commissioner abandons or denies the change of
26 ownership application as provided by the Escrow Law, and the time set forth in Paragraph 4 above
27 has passed, the escrow agent's license of ECC shall be automatically revoked.
28

1 8. Limited Steps to Sell: Notwithstanding Paragraph 2 above, during the period set forth in
2 Paragraph 5 above and including any extension granted thereunder by the Commissioner, Bouey, as
3 the owner of ECC, shall be allowed to take such steps as are necessary to sell ECC as contemplated
4 by this Settlement Agreement. However, under no circumstances, shall such steps by Bouey include
5 processing any escrow transactions and/or signing on the trust account.

6 9. Closing Audit Upon Revocation: Bouey hereby acknowledges and understands that a
7 closing audit report shall be submitted to the Commissioner within 105 days from the date of any
8 order revoking ECC's escrow agent's license. Bouey agrees that if a closing audit report is not
9 submitted to the Commissioner, then Bouey shall pay to the Commissioner a penalty of \$10,000.00
10 within 10 days of written demand by the Commissioner. The penalty shall be paid by check made
11 payable to the Department of Business Oversight and made to the attention of Accounting,
12 Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice
13 of payment shall be concurrently made to Timothy L. Le Bas, Senior Counsel at Department of
14 Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.

15 10. Dismissal of Action: Except as otherwise provided herein, the parties agree that this
16 Settlement Agreement shall have the effect of dismissing that portion of the Notice of Intention
17 relating to the revocation of ECC's escrow agent's license. The dismissal shall become effective
18 upon the approval of the change of ownership described in Paragraph 7 above. This dismissal shall
19 have no effect on the validity of ECC's admissions herein.

20 11. Full and Final Settlement: The parties hereby acknowledge and agree that this Settlement
21 Agreement is intended to constitute a full, final and complete resolution of this matter. The parties
22 further acknowledge and agree that nothing contained in this Settlement Agreement shall operate to
23 limit the Commissioner's ability to assist any other agency (county, state or federal) with any
24 prosecution, administrative, civil or criminal, brought by any such agency against ECC, Bouey or any
25 other person based upon any of the activities alleged in this matter or otherwise.

26 12. Independent Legal Advice: Each of the parties represents, warrants, and agrees that it has
27 received or been advised to seek independent advice from its attorney(s) and/or representatives with
28 respect to the advisability of executing this Settlement Agreement.

1 13. Full Integration: Each of the parties represents, warrants, and agrees that in executing this
2 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own
3 counsel and/or representative. Each of the parties further represents, warrants, and agrees that in
4 executing this Settlement Agreement it has placed no reliance on any statement, representation, or
5 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
6 failure of any party or any other person or entity to make any statement, representation or disclosure
7 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
8 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude
9 the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
10 Settlement Agreement.

11 14. Final and Complete Agreement: This Settlement Agreement is the final written
12 expression and the complete and exclusive statement of all the agreements, conditions, promises,
13 representations, and covenants between the parties with respect to the subject matter hereof, and
14 supersedes all prior or contemporaneous agreements, negotiations, representations, understandings,
15 and discussions between and among the parties, their respective representatives, and any other person
16 or entity, with respect to the subject matter covered hereby.

17 15. Presumption from Drafting: In that the parties have had the opportunity to draft, review
18 and edit the language of this Settlement Agreement, no presumption for or against any party arising
19 out of drafting all or any part of this Settlement Agreement will be applied in any action relating to,
20 connected, to, or involving this Settlement Agreement. Accordingly, the parties waive the benefit of
21 California Civil Code section 1654 and any successor or amended statute, providing that in cases of
22 uncertainty, language of a contract should be interpreted most strongly against the party who caused
23 the uncertainty to exist.

24 16. Effective Date: This Settlement Agreement shall not become effective until signed by all
25 parties and electronically mailed to Marcia J. Bouey at marciabouey@me.com.

26 17. Counterparts: This Settlement Agreement may be executed in one or more counterparts,
27 each of which shall be an original but all of which, together, shall be deemed to constitute a single
28 document. This Settlement Agreement may be executed by facsimile signature, and any such

facsimile signature by any party hereto shall be deemed to be an original signature and shall be binding on such party to the same extent as if such facsimile signature were an original signature.

18. Authority to Execute: Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

19. Voluntary Agreement: The parties represent and acknowledge that he, she or it is executing this Settlement Agreement completely voluntarily and without any duress or under influence of any kind from any source.

20. Public Record: This Settlement Agreement will be a matter of public record.

Dated: 12/12/17

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 12/5/17

THE ESCROW CHEQUE CORP.

By _____
MARCIA J. BOUEY

Dated: 12/5/17

By _____
MARCIA J. BOUEY, an individual